# Coopers & Lybrand v Singapore Society of Accountants & Ors

HIGH COURT (SINGAPORE) – SUIT NO 1241 OF 1987
CHAO HICK TIN JC
8 JULY 1988

*Civil Procedure – Defamation action – Disclosure of entire report relating to audited accounts of company and subsidiaries – Application for – Whether parts of report not relating to subsidiaries within plaintiffs' audit need be disclosed by defendant – Whether disclosure would subject defendant to possible civil or criminal action – Acts done in compliance with court order absolutely privileged – Rules of the Supreme Court 1970, O 24 rr 10, 13(1)*

The plaintiffs sued the defendants for damages for libel as a result of a press statement issued by the defendants regarding the plaintiffs' audit of the accounts of a certain company and its subsidiaries. The press statement was based on a report of investigators who were appointed by the first defendant to investigate the accounts of the companies. The plaintiffs applied, by summons-in-chambers, for the production of the complete report of the investigators and an order that the plaintiffs be at liberty to inspect the documents. The defendants objected to the production of the full report on the grounds that two parts of the report related to audits done on other subsidiary companies which the plaintiffs had no responsibility for and were therefore not relevant to the present action of defamation. Furthermore, the defendants contended that by releasing the entire report, they may be subject to a civil action under s 499 of the Penal Code (Cap 224, 1985 Ed). The assistant registrar made no order on the plaintiffs' application to produce the entire report and the plaintiffs appealed to the High Court

**Held,** allowing the appeal: (1) Having regard to the nature of the present action and the clear link between the accounts of a subsidiary company with those of its holding company, the entire report is relevant to the action and the production of the full report is necessary for disposing fairly of this case.

(2) No authority was cited to show that compliance by a party with an order of court to produce constituted publication which could form a basis for an action in tort or a basis for criminal action under s 499 of the Penal Code. On the contrary, it is settled law that statements contained in documents made in judicial proceedings are absolutely privileged. However a party who obtains documents by process of court can only use them for the purposes of those proceedings and nothing else.

**Cases referred to**
1 *Law* v *Llewellyn* [1906] 1 KB 487 (refd)
2 *R* v *Rule* [1937] 2 KB 375 (refd)
3 *R* v *Munslow* [1895] 1 QB 758 (refd)
4 *Harman* v *Home Office* [1983] 1 AC 280 (refd)
5 *Riddick* v *Thames Board Mills Ltd* [1977] QB 881 (refd)

**Legislation referred to**
Rules of the Supreme Court 1970 O 24 rr 10(1), (2), 13(1)
Penal Code (Cap 224, 1985 Ed) s 449
Companies Act (Cap 50, 1985 Ed) ss 207, 401(2)

*Loh Boon Huat* for the plaintiffs.
*KS Chung* (*Susan Leong* (*Miss*) with him) for the defendants.

*Cur Adv Vult*

**Chao Hick Tin JC:** This is an appeal by the plaintiffs against the decision of the assistant registrar given on 28 August 1987 making no order on the application of the plaintiffs under O 24 r 10 of the Rules of the Supreme Court 1970 for the production by the defendants of a certain report referred to in the defence filed.

In this suit, the plaintiffs, a professional firm of accountants, sues for, inter alia, damages for libel. The first defendant is a statutory corporation established under s 3 of the Accountants Act ('the Act') and the second and third defendants are the president and registrar respectively of the first defendant.

Sometime on or about 27 November 1986, the first defendant appointed two of its members, J Medora and KB Lee (hereinafter called 'the investigators'), to investigate the accounts of the Pan Electric Group of Companies. As a result of the report of the investigators, the defendants on or about 21 April 1987 issued or caused to be issued a press statement, the full text of which reads as follows:

> Two members of the Singapore Society of Accountants were appointed to investigate the accounts of the Pan Electric Group of Companies. They have completed their report and it has been submitted to the Singapore Society of Accountants. It was a massive exercise as there were about 68 subsidiaries and associate companies belonging to the group. It has taken the two investigating accountants more than five months to complete their task.
>
> The investigating accountants have concluded, inter alia, that the accounts for the year 1984 cannot be stated to be 'true and fair'. There is evidence to suggest that the group's profits could be overstated by about $15 million.
>
> The report also states that there were abnormally large payments and receipts in the accounts of the group during the last few days of the years 1983 and 1984 and the first few days of the following years for no apparent reason. It also appears that this flow of moneys was effected through a bank account opened only for this purpose. Most of these payments and receipts were from or on behalf of other group companies and a stock broking firm, Associated Asian Securities (Pte) Ltd, with whom most of the companies had no apparent dealings. There is no evidence that the auditors investigated into this state of affairs fully.
>
> The group accounts also show that some 25% of the profits in 1984 were derived from trading in shares. The annual report does not sufficiently disclose this information to the shareholders.
>
> Notwithstanding evidence before them, the auditors failed to carry out adequate audit procedures and exercise appropriate professional judgment.
>
> The Registrar of the Society is presently studying the report and will be taking legal advice on the appropriate action against the auditors involved.

The plaintiffs allege in their statement of claim that it was a matter of public knowledge that the above statement referred and was understood to refer to them as they were involved in auditing the accounts of the Pan Electric

Group as a whole and a large number of its subsidiary companies. The plaintiffs aver that the statement was defamatory of them in the way of their profession and in relation to their conduct therein.

On or about 23 April 1987, the defendants issued or caused to be issued a further press statement along similar lines as the first statement save that:

(i) the figure in the second paragraph thereof was $10 million, not $15 million;
(ii) the final sentence in the third paragraph of the first statement was deleted; and
(iii) the penultimate paragraph of the first statement was deleted.

In the statement of claim, the plaintiffs also question the propriety of the appointment of Messrs Medora and Lee by the first defendant to investigate the accounts of the Pan Electric Group of Companies. As this point does not concern us here, I do not propose to say anything more about it.

In the defence filed on 6 June 1987, the defendants admitted that the investigators submitted a report of their investigation ('the report') to the third defendant who received it on behalf of the first defendant. The report was referred to in paras 3(1)(e), 3(5) and 3(6) of the defence.

In response to the plaintiffs' claim based on libel on account of the two statements issued, the defendants pleaded that the words are not defamatory of the plaintiffs and, in the alternative, that the words are true in substance and in fact and furnished the following particulars in para 6 of the defence in justification:

*Particulars of justification*

The defendants will rely on the facts and matters stated in that part of the report of Messrs Medora and Lee which is annexed hereto and served herewith.

By a written notice to produce documents referred to in pleadings dated 13 June 1987, the plaintiffs, pursuant to O 24 r 10(1), required the defendants to produce for inspection the complete report of the investigators. There having been no compliance by the defendants, the plaintiffs on 22 June 1987 applied by summons-in-chambers for, inter alia, the production of the report and for an order that the plaintiffs be at liberty to inspect and peruse the documents so produced and to make notes of their contents and be entitled to be supplied with copies thereof on payment of the proper charges. However, on 1 July 1987, the defendants gave written notice to the plaintiffs, pursuant to O 24 r 10(2), objecting to the production of the report on the ground that the other parts of the report, which dealt with accounts audited by two other firms of accountants, Messrs Ernst & Whinney and Messrs Tan Teo & Wong, are not relevant to the issues in the present suit. Not that anything turns on this, I thought I should mention that the notice of objection was given late because it would appear that the solicitor for the defendants was out of the country at the relevant time.

The assistant registrar having made no order on the application to produce the entire report, the plaintiffs have appealed to the judge-in-chambers and this is the matter now before me.

According to the defendants, the report of the investigators consists of three parts. One part relates to the accounts audited by the plaintiffs. Another part relates to the accounts audited by Messrs Ernst & Whinney and a third part relates to the accounts audited by Messrs Tan Teo & Wong. The defendants stated that the three parts are separate and distinct and they do not interrelate. The main reason, as stated in the defendants' written skeletal arguments, why the defendants object to the production of the entire report is that they do not wish those two other firms to complain or take action against the defendants either by way of civil proceedings or by laying a complaint under s 499 of the Penal Code. The defendants contended that if the other two parts are defamatory of the other two firms, then what the plaintiffs are seeking is to ask the court to order the commission of a tort or the commission of an offence.

The defendants stressed that the other two parts of the report have nothing to do with the plaintiffs as they relate to the audit of the other two firms. The defendants stated that Messrs Ernst & Whinney were responsible for the audit of the accounts of four subsidiary companies and Messrs Tan Teo & Wong were responsible for the audit of the accounts of only one subsidiary company and that the plaintiffs had no responsibility whatsoever for the audit of these subsidiary companies. The defendants contended that those two parts of the report are not relevant to the present action of defamation and they are not relying on them.

The functions and duties of an auditor of a holding company are set out in s 207 of the Companies Act (Cap 50, 1985 Ed). Sub-section (2) of that section requires such an auditor to state in his report to the members, inter alia, (i) whether the consolidated accounts are in his opinion properly drawn up so as to give a true and fair view of the matters that are required to be dealt with and are in accordance with the provisions of the Act; (ii) whether he has considered the accounts and auditor's reports of all subsidiaries of which he has not acted as auditor, being accounts that are included in the consolidated accounts; (iii) whether he is satisfied that the accounts of the subsidiaries are in form and content appropriate and proper and whether he has received satisfactory information and explanations are required by him; and (iv) whether the auditor's report on the accounts of any subsidiary was made subject to any qual-

ification or comment. Such an auditor of a holding company must also state any defect or irregularity in the consolidated accounts and any material matter not set out in the consolidated accounts. He is also required to form an opinion whether the procedure and methods used by a holding company or a subsidiary in arriving at the amounts taken into account in the consolidated accounts were appropriate to the circumstances of the consolidation.

As stated above, the plaintiffs were the auditors of the consolidated accounts of the Pan Electric Group of Companies, besides being the auditors of numerous subsidiary companies. The following remarks in the two statements complained of are most pertinent:

(i) 'There is evidence to suggest that the group's profits could be overstated by about $15 million.' (changed to $10 million in the second statement.)
(ii) In referring to the abnormally large payments and receipts in the accounts of the group during the last few days of the years 1983 and 1984 and the first few days of the following years, the following comment was made: 'There is no evidence that the auditors investigated into this state of affairs fully,' (appears only in the first statement.)
(iii) 'The group accounts also show that some 25% of the profits in 1984 were derived from trading in shares. The annual report does not sufficiently disclose the information to the shareholders.'
(iv) 'The auditors failed to carry out adequate audit procedures and exercise appropriate professional judgments.' (appears only in the first statement.)

No distinction was made between the different firms of accountants and neither is there any reference to parts of a report.

From the information contained in that portion of the report which has been furnished by the defendants, Mr JM McCormack, in his affidavit filed on behalf of the plaintiffs on 15 September 1987 has listed out four instances where the plaintiffs were criticized by the investigators in relation to audit work undertaken by Messrs Ernst & Whinney, Messrs Tan Teo & Wong and Messrs Peat Marwick Mitchell. Bearing in mind the functions and duties of an auditor of a holding company preparing consolidated accounts, I would tend to agree that the remarks made by the investigators on the audit work of Messrs Ernst & Whinney and Messrs Tan Teo & Wong would be relevant in determining whether the remarks against the plaintiffs made by the investigators, upon which the defendants rely, are justified and/or fair and reasonable.

In para 10 of the affidavit of Ms Susan Leong filed on 11 March 88, she sets out the views of the two investigators on this point. It is of interest to note that the investigators said that 'our investigation reports for each of the three auditors *can be treated as* separate' and not '*are* separate'. This is also the first time where the report is referred to in the plural – 'reports'. The link between the duties of the auditors of the group accounts and those of the auditors of the subsidiary accounts is recognized by the investigators when they said 'at the stage when SSA (first defendant) reviews the group accounts the group auditor would have to justify what steps were taken to ensure the reasonableness of the subsidiaries' figures that were incorporated into the group accounts.'

I also note that the portion of the report which has been furnished by the defendants to the plaintiffs does not appear to be in the usual form and those pages seem to contain separate comments on the audit done by the plaintiffs on the accounts of each individual company, including the holding company. I find it most unusual for an investigator to submit a report in this way. I would expect there to be at least a covering letter or an introduction setting out the terms of reference and the methods used in their investigations. Similarly, there must also be a general conclusion. In any event, having regard to the nature of the present action and the clear link between the accounts of a subsidiary company and those of its holding company, I am of the opinion that the entire report is relevant to the action and that the production of the full report is necessary for disposing fairly of this case (see O 24 r 13(1) of the Rules of the Supreme Court 1970).

I turn next to the arguments of the defendants that the production of the entire report could expose the defendants to civil and criminal action which could be brought by Messrs Ernst & Whinney and Messrs Tan Teo & Wong. I would first point out that this is not a ground set out in the notice of objection served by the defendants pursuant to O 24 r 10(2). In any case, I seriously wonder why the defendants are taking this point at this time. This should have been their concern before they issued the statements on 21 April and 23 April 1987. I do not think it could have been their intention now to suggest that anything improper is contained in the other two parts of the report. Indeed, a partner of Messrs Tan Teo & Wong was convicted of wilfully making a misleading statement, an offence under s 401(2) of the Companies Act, in relation to the firm's audit of one of the subsidiaries of the Pan Electric Group. No authority was cited to me by counsel for the defendants to show that compliance by a party with an order of court to produce constituted publication which could form a basis for an action in tort or a basis for criminal action under s 499 of the Penal Code. On the contrary, it is settled law that statements made in the course of judicial proceedings or statements contained in documents made in judicial proceedings are absolutely pri-

vileged: see *Gatley on Libel & Slander* (8th Ed) paras 381, 385 and 400, and *Law* v *Llewellyn*.[1] Where an occasion is privileged at common law for the purposes of civil libel, it will also be privileged for the purposes of criminal libel: see *R* v *Rule* [2] and *R* v *Munslow* [3] at p 761.

It also seems clear that a party who obtains documents by process of court can only use them for the purposes of those proceedings and nothing else: see *Gatley* at para 1210 and *Harman* v *Home Office*,[4] a decision of the House of Lords. A subsequent action founded on documents so disclosed may be struck out: see *Riddick* v *Thames Board Mills*.[5] In *Riddick*,[5] Lord Denning said at p 896:

> The memorandum was obtained by compulsion. Compulsion is an invasion of a private right to keep one's documents to oneself. The public interest in privacy and confidence demands that this compulsion should not be pressed further than the course of justice requires. The courts should, therefore, not allow the other party – or anyone else – to use the documents for any ulterior or alien purpose ... In order to encourage openness and fairness, the public interest requires that documents disclosed on discovery are not to be made use of except for the purposes of the action in which they are disclosed. They are not to be made a ground ... for bringing a libel action ...

In the premises, and as no good cause has been shown to refuse production, I would order the production by the defendants of the complete report within seven days hereof at the office of their solicitors, Messrs Chung & Co, for inspection by the plaintiffs, and the defendants shall, as requested by the plaintiffs, furnish copies thereof on payment of the proper charges. I should, however, like to make it an express condition of this order that the report shall be used by the plaintiffs solely for the purposes of this action and nothing else. I would hasten to add and this must have been obvious, that no observation that I have made herein should be taken to mean that I have in any way passed judgment on any aspect relating to the substantive merits of the case.

The appeal is accordingly allowed with costs fixed at $1,000.

*Appeal allowed.*

Solicitors: *Godwin & Co*; *Chung & Co.*

Reported by *Ng Sheau Jiuan*

## Ong Jin Choon v Lim Hin Hock & Anor

HIGH COURT (SINGAPORE) – SUIT NO 750 OF 1982
THEAN J
7 JUNE 1988

*Road Traffic – Collision between motorcycle and taxi – Plaintiff hit as a result of collision – Dispute on liability – Computation of actual loss of earnings*

*Tort – Negligence – Road accident – Dispute on liability – Computation of actual loss of earnings*

The plaintiff, a director of his two family companies, was injured severely when a collision between the first defendant's motorcycle and the second defendant's taxi caused the motorcycle to collide into the plaintiff. The plaintiff brought an action against both the defendants for damages for negligence. Before the trial, the parties agreed on a sum of special and general damages, leaving for trial only two issues, namely, liability and actual loss of earnings sustained by the plaintiff.

**Held:** (1) There was no dispute that either of the defendants or both of them were liable to the plaintiff who was an innocent bystander. On the evidence, both the defendants were negligent but the second defendant was negligent to a greater degree than the first defendant. The court therefore apportioned the blame as follows: two-thirds to the second defendant and one-third to the first defendant.

(2) The plaintiff did not receive his salaries from the two companies during the period of disability as a matter of legal right, as there was no contractual obligation on the part of the companies to make such payments to him. No credit ought to be given for these amounts drawn by the plaintiffs in assessing his loss of earnings.

(3) A total amount of $40,677.42 is to be awarded as actual loss of earnings sustained by the plaintiffs.

**Cases referred to**

1 *Browning* v *The War Office & Anor* [1963] 1 QB 750 (refd)
2 *Parry* v *Cleaver* [1970] AC 1 (refd)
3 *Cunningham* v *Harrison & Anor* [1973] 1 QB 942 (refd)
4 *Dennis* v *London Passenger Transport Board* [1948] 1 All ER 779 (refd)
5 *Lim Kiat Boon & Ors* v *Lim Seu Kong & Anor* [1980] 2 MLJ 39 (refd)

*Bala Chandran* for the plaintiff.
*Benedict Chan* for the first defendant.
*Michael Kuah* for the second defendant.

*Cur Adv Vult*

**Thean J:** On 5 March 1979 at about 4.00 pm, the plaintiff was waiting for a taxi at the taxi stand in front of the then Singapore Turf Club at Cecil Street. The taxi stand was on the right side of Cecil Street, if one faces the direction of Cross Street and the Multi-Storey Car Park at Cecil Street/Market Street. Cecil Street was at the material time, and is, a one-way street with traffic travelling from Anson Road towards Cross Street and the Multi-Storey Car Park. At the taxi stand, there was a metal railing, and the plaintiff at the time was standing at the